

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

United States of America,

Plaintiff,

v.

Criminal Case No. 10-20302

Bryndon Clentional Weathersby,

Honorable Sean F. Cox

Defendant.

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**ORDER**

**GRANTING THE GOVERNMENT’S MOTION TO DISMISS  
AND DISMISSING DEFENDANT’S § 2255 MOTION WITH PREJUDICE**

Defendant Brydon Clentional Weathersby (“Defendant”) pleaded guilty to being a convicted felon in possession of ammunition. This Court sentenced Defendant on January 21, 2011, and issued a Judgment on January 31, 2011. Defendant did not file a direct appeal.

Acting *pro se*, on February 19, 2013, Defendant filed a “Motion To Re-Sentence.” (Docket Entry No. 51). Although the motion filed did not expressly reference 28 U.S.C. § 2255, the relief requested in this motion is consistent with a motion to vacate sentence under § 2255 and is therefore the equivalent of a petition under § 2255. In an Order issued on June 4, 2013, this Court ordered that Defendant’s February 19, 2013 filing would be construed as a motion under § 2255. (Docket Entry No. 59).

Thereafter, on June 12, 2013, the Government filed a Motion to Dismiss Defendant’s § 2255 Motion as untimely. (Docket Entry No. 60).

Defendant has not responded to that motion and the time permitted for doing so has long since passed.

Having reviewed the Government's unopposed Motion to Dismiss, the Court agrees that Defendant's February 19, 2013 § 2255 motion must be dismissed because it was filed beyond the one-year statute of limitations period provided for under the Anti-Terrorism and Effective Death Penalty Act of 1996.

The Court also concludes that a certificate of appealability should not issue. When a district court denies habeas relief on procedural grounds without reaching the petitioner's constitutional claims, a certificate may issue only if the petitioner shows that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. Daniel*, 529 U.S. 473, 484-85 (2000). This Court does not believe that reasonable jurists would find it debatable as to whether this Court is correct in its procedural ruling. The Court shall therefore decline to issue a certificate of appealability.

Accordingly, IT IS ORDERED that the Government's Motion to Dismiss is GRANTED and Defendant's § 2255 Motion is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that the Court DECLINES to issue a certificate of appealability to Defendant.

IT IS SO ORDERED.

Dated: October 29, 2013

S/ Sean F. Cox  
Sean F. Cox  
U. S. District Court Judge

I hereby certify that on October 29, 2013, the foregoing document was served upon counsel of record by electronic means and upon Bryndon Clentional Weathersby by First Class Mail at the

address below:

Bryndon Clentional Weathersby  
527165  
Lakeland Correctional Facility  
141 First Street  
Coldwater, MI 49036

Dated: October 29, 2013

S/ J. McCoy  
Case Manager